BORA LASKIN LAW LIBRARY
3 1761 10084491 9

Debtor & Creditor: Cases and Materials

Professors
M.J. Trebilcock
B.J. Reiter
J.B. Laskin

1977

Volume 2

Faculty of Law
University of Toronto
August 1977

Archives
KF
1536
ZA2
T7
1977
v.2

LAW LIBRARY
SEP 28 1977
FACULTY OF LAW
UNIVERSITY OF TORONTO

DEBTOR & CREDITOR:

CASES AND MATERIALS

Volume 2

Professors M.J. Trebilcock
B.J. Reiter
J.B. Laskin

Faculty of Law
University of Toronto
August 1977

KF
1236
Z A9
T7
1977
no.2

SUMMARY OF CONTENTS

Chapter

1. The Nature of a Debt
2. The Economics of Debt Collection
3. Debt and Invasion of Privacy
4. Self-Help Collection
5. Actions Prior to Judgment
6. The effect of Judgment and Interest upon Judgment
7. Examination of the Judgment Debtor
8. Exemptions from the Execution Process
9. Execution
10. Garnishment
11. Residual Methods of Execution
12. Rights of the Debtor after Judgment
13. Priorities among Creditors
14. Special Creditors
15. A Sheriff's File
16. Reform of the Enforcement Process
17. Mechanics' Liens
18. Impeachable Transactions
19. Introduction to Bankruptcy
20. Alternatives to Bankruptcy
21. Beginning the Process
22. The Property of the Bankrupt
23. Antecedent Transactions
24. Distributing the Estate
25. Effect of Bankruptcy and Discharge

Appendix: Problems

TABLE OF CONTENTS

CHAPTER 9: EXECUTION

A. Introduction 292

(a) Introductory Note 292

(b) The Execution Act 292

(c) The Creditors' Relief Act 304

(d) Federal Court Act 305

(e) Supreme Court of Ontario, Rules of Practice 307

(f) The Small Claims Court Act 312

B. Fieri Facias 316

(a) The Binding Effect 316

i) La Forest, "Some Aspects of the Writ of Fieri Facias" 316

ii) The Land Titles Act 317

(b) Issue and Renewal 319

i) Supreme Court of Ontario, Rules of Practice 319

ii) The Limitations Act 320

iii) Note 320

(c) Exigible Property 325

i) Generally 325

1. "Executions Against Personal Property in England and British Columbia" 325

2. Note: Property Subject to Execution 329

ii) Real Estate Transactions 330

1. Note 330

2. Case # 30, Kimniak v. Anderson 332

3. Case # 31, Robinson v. Moffatt 336

4. Case # 32, McDonald v. Royal Bank 339

5. Case # 33, Davidson v. Davidson 341

iii) Contingent Interests 346

iv) Mortgages of Land 347

v) Chattel Mortgages and Conditional Sales 347

1. Interest of Vendors and Mortgages of Chattels 348

2. Interest of Purchasers and Mortgagors of Chattels 348

3. Case # 34, Ruscheinsky v. A. Spencer Co. Ltd. 349

vi) Money, Bills of Exchange and Specialties or Other Security for Money 350

vii) Book Debts and Choses in Action 351

1. Case # 35, Re A.G. Ont and Royal Bank of Canada 352

viii) Joint Tenancies 357

1. Note 357

2. Case # 36, Re Young 358

Case # 37, Sirols v. Breton 362

ix) Partnership Interests

Case # 38, Sandham v. Sandham Bros. 366

x) Company Shares 369

1. Note 369

2. Case # 39, Associates Finance Co. v. Webber 370

(d) Purchases of Goods from the Sheriff 378

i) Introductory Note 378

ii) The Personal Property Security Act 379

iii) The Problem of Renewals 383

iv) Interpleader 384

(e) Functions and Responsibilities of the Sheriff 390

i) Relationship with the Execution Creditor 390

1. Case # 40, Morris v. Salbert 390

2. Case # 41, Graves v. Sprague 392

ii) The Mechanics of Seizure 394

1. Case # 42, Watson v. Murray 395

2. Case # 43, Re Bishop and Trades Finance Corporation Ltd. 399

3. Case # 44, R. v. Vroom 402

iii) The Use of Force 407

1. Case # 45, Hudson v. Fletcher 410

2. Case # 46, Vaughan v. McKenzie 413

iv) The Duty to Obtain a Fair Price 416

1. Case # 47, Smith v. Colles 417

2. Case # 48, Pease v. Tudge 418

Trebilcock and Shulman, "The Pathology of Credit Breakdown" 422

TABLE OF CONTENTS

CHAPTER 10: GARNISHMENT

A. Introduction 425

(a) Note 425

(b) Supreme Court of Ontario, Rules of Practice 426

(c) The Small Claims Court Act 427

(d) The Apportionment Act 432

(e) The Creditors' Relief Act 433

(f) Note on Rule 597 434

(g) Note: Special Creditors 434

B. Effect of Service of the Garnishment Order: Priorities Problems between Garnishor and Prior Assignees of the Debt 434

(a) Introductory Note 434

(b) Case # 49, Kare v. North West Packers 437

(c) Case # 50, Industrial Development Bank v. Valley Dairy Ltd. 444

(d) Case # 51, Imperial Oil v. Abilene Contracting Co. 445

(e) Note on Authority of Kare 449

Case # 52 General Brake & Clutch Service v. W.A. Scott & Sons Ltd. 450

(f) Note 456

(g) Case # 53, Yates v. Terry 457

(h) Note on Rules 603 and 606 459

C. Debts Subject to Garnishment 460

(a) Introductory Note 460

(b) Debts Owing or Accruing Due 462

i) Case # 54, Quercetti v. Tranquili 462

ii) Case # 55, Garner v. Strickland and Western Forest Ihdustries 463

iii) Case # 56, Lee v. MacDonald 466

iv) Case # 57, Sandy v. Yukon Construction Co. 469

v) Case # 58, Canadian Acceptance Corporation v. Desrochers and Benoit 474

vi) Case # 59, Canadian Bank of Commerce v. Dabrowski and Dabrowski and Hunt 477

vii) Gordon, "Comment on Dabrowski" 479

viii) Case # 60, Moir v. Franciotta 481

(c) Conditional/Contingent Debts 483

i) Insurance Proceeds 483

Case # 61, Vater v. Styles 487

ii) Trust Funds

Case # 62, Webb v. Stenton 487

iii) Note: Conditional Debts 490

(d) Bank Accounts 493

i) Deposit Accounts

Case # 63, Bel.Fran Investments Ltd. v. Pantuity Holdings Ltd. 493

ii) Joint Accounts

1. Case # 64, Re Davis, Nash and Davis v. Royal Bank of Canada 499

2. Case # 65, Re Adler 503

3. Note: Leaf v. McGowan 504

(e) Debts Owed to a Partnership 506

Case # 66, Hoon v. Maloff 506

(f) Other Debts Subject to Garnishment 508

D. Protection of Wages

(a) The Wages Act 508

(b) Note: The English Position 509

(c) Note: Protection of the Debtor - Employee from Dismissal 510

E. Some Forms 512

(a) Small Claims Court - Affidavit for Direction to Garnish 512

(b) Small Claims Court - Direction to Garnish Wages 513

(c) Affidavit for Garnishee Order 517

(d) Interim Garnishee Order 518

(e) Final Garnishee Order 519

TABLE OF CONTENTS

CHAPTER 11: RESIDUAL METHODS OF EXECUTION

A. Introduction 520

(a) Dunlop, "Execution Against Personal Property in England and British Columbia" 520

B. Equitable Execution by way of Appointment of a Receiver 531

(a) The Judicature Act 531

(b) The Creditors' Relief Act 532

(c) Some Cases 532

i) Case # 67, Re Karch 532

ii) Case # 68, Garry Finance Corporation v. Heizman 534

iii) Case # 69, McCart v. McCart and Adams 535

iv) Case # 70, Collins v. Hall 537

v) Case # 71, Dowell v. Aikenhead 539

(d) Partnership Assets 540

i) Ontario Supreme Court Rules of Practice 540

ii) The Partnership Act 540

(e) Note

C. Charging Orders 541

(a) The Judicature Act 541

(b) Ontario Supreme Court, Rules of Practice 542

(c) Ellis, "The charging Order - A Neglected Means of Enforcement?" 543

(d) Note: Doyle v. Doyle 546

(e) Note

D. Attachment, Committal and Sequestration 546

(a) Ontario Supreme Court, Rules of Practice 546

(b) The Small Claims Court Act 548

(c) Note 549

(d) Case # 72, Leaseconcept Ltd. v. French 549

TABLE OF CONTENTS

CHAPTER 12: RIGHTS OF THE DEBTOR AFTER JUDGMENT

A. Delaying Execution 552

(a) Stay of Execution Pending Appeal 552

i) Supreme Court of Ontario, Rules of Practice 552

ii) The Supreme Court Act 552

iii) The County Court Act 554

iv) The Deserted Wives' and Children's Maintenance Act 555

v) The Small Claims Court Act 555

(b) Case # 73, Schipper v. Linkon 556

(c) The Highway Traffic Act 558

B. Consolidation Orders 559

(a) The Small Claims Court Act 559

(b) Case # 74, Re Landry 561

TABLE OF CONTENTS

CHAPTER 13: PRIORITIES AMONG CREDITORS

A. Introductory Note 566

B. The Legislation 566

(a) The Execution Act 566

(b) The Creditors' Relief Act 566

(c) Note: 579

i) Giguere v. Pilon 579

ii) Interaction with other Statutes re Wages 579

iii) Interaction with Rules 600-606 580

iv) S.32 (11) and (12) of the CRA 582

C. Some Cases 582

(a) Case # 75, Union Bank of Canada v. Taylor 582

(b) Case # 76, Benjamin Moore & Co. v. Finnie 584

(c) Case # 77, Re Sudbury Daily Star Ltd. v. Moxon's Furniture Ltd.

TABLE OF CONTENTS

CHAPTER 14: SPECIAL CREDITORS

A. The Right of the Crown to Priority of Payment 590

(a) Crown Prerogative 590

(b) Statutory Liens, Priorities and Special Forms of Execution 591

1. Provincial Statutes Giving a First Lien and or Creating a "Crown Debt" 591
2. Miscellaneous Provincial Statutes 592
3. Federal Statutes Giving First Lien and Charge or Creating "Crown Debts" 592
4. Statutes Creating a Special Right to Garnishment 592
5. Statutes Creating Special Rights to Distress 593

(c) Attempts to Limit the Crown's Priority 594

(d) Priority as between the Dominion and Provincial Governments 595

(e) The Cases 596

i) Case # 78, R. v. Hamilton 596

ii) Case # 79, Bank of Montreal v. Union Gas Co. 600

iii) Case # 80, Sandberg v. Meurer and M.N.R. 604

iv) Case # 81, The Queen v. Workmen's Compensation Board and City of Edmonton 605

v) Case # 82 Tudor Holdings Ltd. v. Robertson 609

vi) Case # 83 In Re Silver Bros. Ltd. 611

vii) Note: Tassé Committee 616

B. Enforcing Matrimonial Orders and Judgments 618

(a) Alimony and Interim Alimony 618

i) The Judicature Act 618

ii) Supreme Court of Ontario, Rules of Practice 618

iii) The Provincial Courts Act 618

(b) Maintenance Under The Deserted Wives' and Children's Maintenance Act 618

(c) Maintenance Upon Divorce 619

(d) The Problem of Arrears 620

i) Note 620

ii) Case # 84, Re Condon and Condon 624

(e) The Infants Act 624

(f) The Criminal Code S.197 624

C. The Taxation of a Solicitor's Bill 624

D. Utility Shut-Offs 625

E. Compensation for Loss of Property as a Result of a Criminal Act 626

F. The Wage Earner as Creditor 627

(a) Extended Liability for Wages beyond the Immediate Employer 627

i) The Business Corporations Act 627

ii) Canada Business Corporations Act 628

iii) Case # 85, Zavitz v. Brock 629

iv) The Employment Standards Act 635

(b) Summary Means of Enforcing a Wage Debt 636

i) The Employment Standards Act 636

ii) The Master and Servant Act 637

Case # 86 Winkler v. High-Test Electrical Manufacturing Ltd. 639

iii) The Apprenticeship and Tradesmen Act 642

iv) The Industrial Standards Act 642

v) The Ministry of Transportation and Communications Creditors Payment Act 643

vi) The Government Contracts Hours and Wages Act 643

(c) Priority of Wages

i) The Wages Act 644

ii) The Employment Standards Act 645

iii) The Bankruptcy Act 645

iv) The Mechanics' Lien Act 645

v) The Woodmen's Lien For Wages Act 646

(d) Priorities Problems

i) Case # 87, Theatre Amusement Co. Ltd. v. Squires and Reid

ii) Case # 88, Re Campeau Corporation and Provincial Bank of Canada 650

iii) Case # 89, Roach v. McLachlan 653

CHAPTER 15: A Sheriff's File

A. Introduction 657

B. Some Documents Contained in the Sheriff's File on OCI Carpets Ltd. v. George T. 658